

January 23, 2009

Memorandum

TO: Guiselle Carreon
FROM: Paula C. P. de Sousa
RE: Use of the Lease-Lease Back Construction Delivery Methods by School Districts Under the Uniform Public Construction Cost Accounting Act

Pursuant to the Education Code and the Public Contract Code, School Districts may properly use LLB as a method of contracting despite having opted into the Uniform Public Construction Cost Accounting Act.

DISCUSSION

1. Public Contract Code.

A public agency which has, by resolution, elected to become subject to the Uniform Construction Cost Accounting procedures set forth in Public Contract Code section 22010 et seq., may utilize the bidding procedures set forth in Public Contract Code section 22030 when contracting for “maintenance work,” or any public project as defined. Public contract code section 22030 states:

This article applies only to a public agency whose governing board has by resolution elected to become subject to the uniform construction cost accounting procedures set forth in Article 2 (commencing with Section 22010) and which has notified the Controller of that election. In the event of a conflict with any other provision of law relative to bidding procedures, this article shall apply to any public agency which has adopted a resolution and so notified the Controller. [emphasis added]

The Act’s cost accounting standards and alternative bid methods are intended to promote uniformity of cost accounting standards and bidding procedures on construction, maintenance, and other work projects performed or contracted by public entities in California (Pub. Contract Code, § 22001). Local agencies that elect to become subject to the uniform construction cost accounting procedures become eligible to use the alternative bidding methods (Pub. Contract Code, § 22003 et seq.)

Under the alternative methods, projects of \$30,000 or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order (Pub. Contract Code, § 22032(a)). Projects of \$125,000 or less may be let to contract by informal procedures. (Pub. Contract Code, §§ 22032(b), 22034.) . Generally, projects of more than \$125,000 must be let by formal bidding procedures. (Pub. Contract Code, § 22032(c).

2. Education Code.

Education Code section 17406, establishing the LLB construction delivery method, provides an alternative procedure to public bidding. In pertinent part, Education Code section 17406(a) states:

Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

3. Reconciling the Education Code and the Public Contract Code.

Pursuant to California's rules of statutory construction, "we look first to the words themselves" when determining the legislature's intent. (*Golden State Homebuilding Assoc. v. City of Modesto* (1994) 26 Cal.App.4th 601, 608). The statutory language is given its ordinary and everyday meaning, construed in the context of statutory scheme of which the statute is a part. (*Vickco Ins. Services, Inc. v. Ohio Indemnity Company* (1999) 70 Cal.App.4th 55, 62; *Golden State Homebuilding Assoc.*, 26 Cal.App.4th at 608).

Public Contract Code section 22030 states, "[i]n the event of a conflict with any other provision of law relative to bidding procedures, this article shall apply to any public agency which has adopted a resolution and so notified the Controller." However, a plain reading of this statute clearly indicates that this language only applies to conflicts which involve bidding procedures and contracts which involve bidding. The statute makes no mention of "contracting" procedures, nor does it use any language which precludes a specific contracting method. In fact, the statute only uses the term "bidding procedures."

It seems logical that if the Legislature intended to prohibit certain contracting methods, the Legislature would not have limited the language contained in the statute to "bidding procedures." The LLB method of contracting does not involve "bidding procedures" or a competitively bid contract. By the plain language of Education Code section 17406, LLB contracts are let without advertising for bids or undertaking any other "bidding procedures." Because the LLB method of procuring contracts does not involve such bidding procedures, we believe that the Act does not conflict with or override the Education Code as it relates to the LLB method of procuring contracts.